IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 9 OF 2005

Mr. Pandurang Laxman Naik,
Pick-up Driver & Owner,
Resident of House No.8,
Arlem, Margao, Goa. ... Petitioner

versus

1. State of Goa,
   through Public Prosecutor.

2. Dy. Conservator of Forest,
   South Goa Division,
   Margao, Goa. ... Respondents

Mr. Arun Bras De Sa, Advocate for the Petitioner.

Ms. W. Coutinho, Public Prosecutor for the State.

CORAM : N. A. BRITTO, J.

DATE : 29TH SEPTEMBER,2005.

ORAL JUDGMENT

1. The petitioner has invoked writ jurisdiction of this Court to quash and set aside the Judgment/Order dated 6-1-2005 of the learned lst Additional Sessions Judge, Margao,

on the ground that the learned lst Additional Sessions Judge, had no jurisdiction to decide the appeal.

2. Some facts, in brief, are required to be noted, for the disposal of this petition.

3. The petitioner is the owner as well as the driver of a Canter Pick-up bearing No.GA-02-T-5440. The said pickup was detained on 24-6-1999 at Bhatpal Check-Post by Forest Officials when it was found carrying without any transit pass, Sissum wood namely, 2 round logs and 19 rough fashioned logs. The said vehicle with the said logs was seized by the Range Forest Officer on 25-6-1999.

4. The petitioner was prosecuted under the relevant provisions of the Indian Forest Act, 1927(Act, for short) and has been acquitted. The petitioner was issued a show cause notice dated 12-8-1999 by the authorised officer namely, Deputy Conservator of Forest, Margao under Section 61(A), of the said Act, as applicable to the State of Goa, to which the petitioner filed a reply dated 20-8-1999 and as the said reply was found to

be unsatisfactory, the authorised officer, after inquiry, by his Order dated 31-10-2003 ordered confiscation of the said vehicle under Section 61(A) of the said Act as applicable to the State of Goa.

5. The petitioner preferred an appeal to the Sessions Judge and it appears that the said appeal was made over to the lst Additional Sessions Judge, Margao, who has decided the same by his Judgment/Order dated 6-1-2005.

6. Mr. Bras De Sa, the learned Counsel appearing on behalf of the petitioner has submitted that the petitioner has invoked certiorari jurisdiction of this Court and not the extraordinary jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 because the order of confiscation passed by the authorised officer envisages a civil liability. Mr. Bras De Sa has further submitted that the Sessions Judge referred to in Section 61(D) of the Act as applicable to the State of Goa is a persona designata and, therefore, the Sessions Judge could not have made over the case to the learned Additional Sessions Judge to be decided by him and in this view of the matter the Judgment/Order passed by the learned Additional Sessions Judge has got to be considered as without jurisdiction.

7. Mr. Bras De Sa, the learned Counsel has placed reliance on the case of **State of West Bengal and others** v. **Sujit Kumar Rana**((2004) 4 SCC 129).

8. On the other hand, Ms. W. Coutinho, the learned Public Prosecutor appearing on behalf of the State has invited my attention to Section 10(3) of the Code of Criminal Procedure, 1973(Code, for short) and has submitted that since the appeal was to be filed to the Sessions Judge in terms of Section 61(D) of the Act, the Sessions Judge could have allotted the said appeal to be disposed of by the Additional Sessions Judge. Ms. Coutinho has further submitted that the objection regarding jurisdiction was not taken before the learned Additional Sessions Judge and, therefore, it may not be entertained in writ jurisdiction. The learned Public Prosecutor has relied upon the case of **Abdul Mannan and others** v. **State of West Bengal**((1996) 1 SCC 665) wherein it is held by the Supreme Court that the Additional Sessions Judge has the power and jurisdiction of the Sessions Judge.

9. There is no dispute that the petitioner is entitled to invoke writ jurisdiction of this Court as held by the Supreme Court in the case of **Abdul Mannan and others** v. **State of West Bengal**(supra). The same view is

also held in **State of H.P.** v. **Mohinder Singh**(2004 AIR SCW 960).

10. To decide the controversy it is necessary to refer to some of the provisions of the Code as well as of the Act.

11. Sub-Section(3) of Section 10 of the said Code is a provision for disposal of any urgent applications, in the event of the absence or inability to act by the Sessions Judge and, therefore, the respondent may not be in a position to derive any benefit of sub-section (3) of Section 10 of the Code. However, it may be noted that Section 194 of the Code provides that an Additional Sessions Judge or Assistant Sessions Judge shall try such cases as the Sessions Judge of the division may, by a general or special order, make over to him for trial or as the High Court may, by special order, direct him to try. The learned Additional Sessions Judge could have dealt with the appeal only in the event the Sessions Judge is held to be a Court and not as persona designata. The fact that the petitioner did not object at the hearing of the appeal before the Additional Sessions Judge that he had no jurisdiction is of no consequence. A no objection or consent by or on behalf of any or both the parties cannot create or confer jurisdiction on a Court where initially it has or can have none.

12. Section 9 of the Code provides for the establishment of a Court of Session for every sessions division and sub-section (2) thereof provides that every Court of Session will be presided over by a Judge to be appointed by the High Court. Needless to observe the Court of Session is a Criminal Court constituted under Section 6 r/w Section 9 of the Code.

13. Section 61(A) of the Act deals with confiscation of forest produce in case of commission of forest offences and sub-section(ii) thereof provides that when an authorised officer seizes under sub-section (1) of Section 52, any forest produce which is the property of the Government or any such property is produced before the authorised officer under sub-section (1) and once he is satisfied that the forest offence has been committed in respect of such property, such authorised officer may, whether or not a prosecution is instituted for the commission of such forest offence, order confiscation of the property so seized together with all tools, ropes, chains, boats, vehicles, carts, cattle and other contrivances used in the commission of such offence.

14. Section 61(B) provides for issuance of show cause notice before confiscation under Section 61(A). It provides that no order confiscating any forest produce or tools, ropes etc. shall be made under Section 61(A) except after notice in writing to the person from whom it was seized and considering his objection, if any:

Provided that, no order confiscating a motor vehicle shall be made except, after giving a notice in writing to the registered owner thereof, if in the opinion of the authorised officer it is practicable to do so and considering his objections, if any.

15. Admittedly, the order which was the subject matter of appeal before the Sessions Judge and which was dealt with and decided by the learned Additional Sessions Judge was passed by the authorised officer under Section 61(A) of the said Act.

16. Section 61(D) provides for appeal. Sub-section (1) thereof provides that any person aggrieved by any order passed under Section 41, section 61(A) or Section 61(C) may within 45 days from the date of communication to him of such order, appeal to the Sessions

Judge having jurisdiction over the area in which the property to which the order relates has been seized and the Sessions Judge shall, after giving an opportunity of being heard to the appellant and the authorised officer or the officer specially empowered under Section 61(C), as the case may be, pass such order, as he may think fit, confirming, modifying or annulling the order appealed against. Sub-section(2) of Section 61(D) provides that an order of the Sessions Judge under sub-section (1) shall be final and shall not be questioned in any Court of law.

17. It is a settled proposition of law that an authority can be styled to be persona designata if powers are conferred on a named person or authority and such powers cannot be exercised by anyone else. As per Black's Law Dictionary a persona designata is a person pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character. It would be useful to refer to a decision of the Supreme Court in the case of **Central Talkies Ltd., Kanpur** v. **Dwarka Prasad**(AIR 1961 SC 606) to find out whether the Sessions Judge in the case at hand was a designated Officer or a Court. The Supreme Court has stated that:-

> "..... A persona designata is "a person who is pointed out or described as an

> individual, as opposed to a person ascertained as a member of a class, or as filling a particular character". (See Osborn's Concise Law Dictionary, 4th Edition, page 253). In the words of Schwabe, C.J. in Parthasaradhi Naidu v. Koteswara Rao, ILR 47 Mad 369:(AIR 1924 Madras 561(FB), personae designata are "persons selected to act in their private capacity and not in their capacity as Judges"."

18. It would also be useful to refer to the case of **Virindar Kumar Satyawadi** v. **State of Punjab**(AIR 1955(2) SCR 1053) wherein the Supreme Court has stated as follows:

> "It may be stated broadly that what distinguishes a Court from a quasi judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definite judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and
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> to adduce the evidence in proof of it. And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question, therefore, arises as to whether an authority created by an Act is a Court

> as distinguished from a quasi judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court".

19. We have already referred to the relevant and necessary provisions of the Act namely Sections 61(A) to Section 61(D) as applicable to the State of Goa which in my view form a complete code as regards confiscation of forest produce, vehicles, etc. The said provisions indicate the manner of initiation of proceedings, the procedure to be followed both by the Authorised Officer and in appeal by the Sessions Judge, making the Order of the latter, final.

20. In the case of **State of West Bengal and others** v. **Sujit Kumar Rana**(supra) it has been held that an order of confiscation in respect of a property must be distinguished from an order of forfeiture thereof and although the effect of both confiscation and forfeiture of a property may be the same, namely, that the property would vest in the State yet the nature of such order having regard to the statutary scheme must be held to be different. A proceeding for confiscation can be initiated irrespective of the fact as to whether prosecution for commission of a forest offence has been lodged or not. A confiscation proceeding, therefore, is independent of a criminal proceeding. A confiscation envisages a civil liability whereas an

order of forfeiture of the forest produce must be preceded by a Judgment of conviction. If the order of confiscation passed by the authorised officer involves civil liability on the part of the petitioner it does not sound to reason that the Legislature would have provided an appeal to be filed against such order to the Court of Session presided over by the Sessions Judge which is a Criminal Court as distinguished from the Sessions Judge in person. The very fact that Section 61(D) of the Act provides the procedure to be followed by the Sessions Judge, that is to say the procedure which enjoins him to give an opportunity to be heard to an appellant as well as the authorised officer and thereafter to confirm, modify or annul the order passed by the authorised officer also shows that the appellate powers were conferred on the Sessions Judge as a designated Officer and not as a Judge presiding over the Court of Sessions. In other words powers of appeal were conferred on him not as a Court but as a persona designata. In my view, in case the Legislature intended to confer the appellate powers against the orders passed by authorised officers then the Legislature would have specifically provided that an appeal against an order made under Section 61(C) would lie to the Sessions Court. To repeat, since confiscation of property involves civil liability and as the very procedure to be followed by the Sessions Judge is specifically indicated in Section 61(D) of the Act, in my view, the appellate powers against the order of the authorised officer

were conferred on the Sessions Judge as a persona designata and not as a Judge presiding over the Court of Session. Only in the event the appellate powers were conferred on the Sessions Judge as a Court of Sessions then only the Sessions Judge would have been in a position to follow the provisions of the Code and allot the case to the Additional Sessions Judge to be decided by him. In my view, therefore, the learned Sessions Judge as a persona designata ought to have disposed of the appeal by himself and should not have allotted the same either under Section 10 as contended, or under the powers given to the Sessions Judge under Section 194 of the Code. The impugned Order dated 6-1-2005 is clearly without jurisdiction.

21. In the above view of the matter, the petition deserves to succeed. As a result, the Judgment/Order dated 6-1-2005 of the learned Additional Sessions Judge, Margao is hereby set aside and the learned Sessions Judge, Margao, is hereby directed to hear and dispose of the appeal on merits and in accordance with law. Rule made absolute in the above terms.

N. A. BRITTO, J.

RD.